

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

ROGER J. STONE, JR.,

Defendant.

Criminal No. 19-cr-18-ABJ

**GOVERNMENT’S MOTION IN LIMINE TO ADMIT THE “UPLOAD”
OR “CREATION” DATE FOR VARIOUS VIDEOS**

The United States of America, by and through Jessie Liu, United States Attorney for the District of Columbia, respectfully moves *in limine* to admit the “upload” or “creation” date for various videos referenced in the Indictment. The “upload” or “creation” dates are admissible because they are supported by a certification meeting the requirements of Federal Rules of Evidence 902(11) and 803(6) and are relevant to the charges in the Indictment.

BACKGROUND

The government intends to introduce, as evidence in its case-in-chief, five videos of the defendant downloaded from YouTube.com, and one video of the defendant downloaded from C-SPAN.org. Those videos contain statements made by the defendant that are specifically alleged in the Indictment. *See* Indictment ¶¶ 14(a)-(e). The government also intends to introduce into evidence a sixth video downloaded from YouTube.com of the head of Organization 1 stating that he possessed emails belonging to then-candidate Hillary Clinton that would be released in the near future.¹

¹ The government will not be seeking to introduce this video to prove the truth of the matter asserted; rather, only to establish when Organization 1 publicly announced the imminent release of those emails.

At trial, the government will seek to establish its timeline of events by introducing as evidence the “upload” or “creation” date for each of those videos. The government intends to establish this “upload” or “creation” date through the introduction of business record certifications provided by Google (which owns YouTube.com) and C-SPAN for each of the videos in question. *See* Exhibit A and B. Those certifications generally state that the upload or creation date for each video is automatically generated and kept in the ordinary course of business for the video in question.

ARGUMENT

Federal Rule of Evidence 901(a) governs the authentication or identification of evidence. That rule requires the proponent to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a). To admit the evidence, the Court must find that the proponent “has ‘offered a foundation from which the jury could reasonably find that the evidence is what the proponent says it is.’” *United States v. Safavian*, 435 F. Supp. 2d 36, 38 (D.D.C. 2006) (quoting 5 Stephen A. Saltzburg *et al.*, *Federal Rules of Evidence Manual* §901.02[1] at 901-5–901-6 (8th ed. 2002)). While the proponent must satisfy its burden under Rule 901(a), “[t]he ‘threshold for the Court’s determination of authenticity is not high,’ and the proponent’s ‘burden of proof for authentication is slight.’” *United States v. Hassanshahi*, 195 F. Supp. 3d 35, 48 (D.D.C. 2016) (quoting *McQueeney v. Wilmington Tr. Co.*, 779 F.2d 916, 928 (3d Cir. 1985)). The Court need not find that the evidence is necessarily what the proponent claims, but only that there is sufficient evidence so that the jury ultimately might do so. *Safavian*, 435 F. Supp. 2d at 38.

Applying this standard, courts have approved the use of business record certifications, such as Exhibits A and B, to establish the authenticity of upload dates for videos on YouTube.com. *See*,

e.g., Ratner v. Kohler, No. 17-cv-542, 2018 WL 1055528, at *11 (D. Haw. Feb. 26, 2018) (“Courts have held that YouTube videos are self-authenticating under Federal Rule of Evidence 902(11) if the party offering the video provides certification by the custodian of the records that the records meet the requirements of Fed. R. Evid. 803(6)(A)-(C).”); *United States v. Hassan*, 742 F.3d 104, 132–33 (4th Cir. 2014) (affirming that YouTube.com videos are self-authenticating with a certificate in conformance with Fed. R. Evid. 902(11) stating that the “YouTube videos had been maintained as business records in the course of regularly conducted business activities”); *see also United States v. Recio*, 884 F.3d 230, 236–37 (4th Cir. 2018) (finding a Facebook post authentic that was supported “by a certification from a Facebook records custodian, showing that the Facebook record containing the post was made ‘at or near the time the information was transmitted by the Facebook user’”). Reliance on such certifications save trial time by avoiding the necessity of witness testimony to authenticate upload dates.

The certifications attached as Exhibits A and B conform to the requirements of Federal Rules of Evidence 902(11) and 803(6), which govern certifications for self-authenticating business records. *See Safavian*, 435 F. Supp. 2d at 39 (providing that Fed. R. Evid. 902(11) and 803(6) “were intended to go hand in hand” and that “Rule 902(11) is . . . the functional equivalent of testimony offered to authenticate a business record tendered under Rule 803(6).”) (internal quotations and citations omitted). Rule 902(11) provides that “[t]he original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian,” is self-authenticating. Rule 803(6) provides an exception to the rule against hearsay for “[a] record of an act, event, condition, opinion, or diagnosis if: (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge; (B)

the record was kept in the course of a regularly conducted activity of a business . . . ; [and] (C) making the record was a regular practice of that activity.”

Exhibits A and B meet these requirements. The Google certification (1) is signed by a custodian familiar with how the records were created, managed, stored, and retrieved; (2) states that the data (i.e., the creation dates for the videos) was recorded “automatically at the time, or reasonably soon after, it is entered or transmitted by the user”; and (3) states that “this data is kept in the course of this regularly conducted activity and was made by regularly conducted activity as a regular practice of Google.” *See* Exhibit A. Attached to that certificate is a one page document for each video the government intends to introduce, providing the date that video was created. *See id.* Similarly, the C-SPAN certification (1) is signed by a custodian of records with knowledge of the record keeping of C-SPAN, including how videos are uploaded and maintained on its website; (2) states that the date posted for the video in question was made at or near the time shown on the website; and (3) states that the date was “kept in the regularly conducted business activities” of C-SPAN. *See* Exhibit B. The records attested to in both certifications (i.e., the creation or upload dates for the YouTube and C-SPAN videos) are therefore self-authenticating and require no extrinsic evidence of authenticity to be admitted.

CONCLUSION

For the foregoing reasons, the government respectfully request that the Court admit the attached “upload” or “creation” dates and times provided by Google and C-SPAN, as they are supported by certifications conforming with the requirements of Fed. R. Evid. 902(11) and 803(6),

and are relevant to proving the charges in the Indictment.

Respectfully submitted,

JESSIE K. LIU
U.S. Attorney for the District of Columbia

By: /s/
Jonathan Kravis
Michael J. Marando
Assistant United States Attorneys

Adam C. Jed
Aaron S.J. Zelinsky
Special Assistant United States Attorney
555 4th Street NW
Washington, D.C. 20530

July 26, 2019

Exhibit A

Google LLC
1600 Amphitheatre Parkway
Mountain View, California 94043



USLawEnforcement@google.com

www.google.com

06/20/19

AUSA Michael Marando
USAO
555 4th Street NW, Room 4235
Washington, DC 20530

Re: 2703(d) Order or Equivalent dated June 07, 2019 (Google Ref. No. 2568092)
SC No. 19-1208, 1:19-sc-01208-RMM

Dear AUSA Marando:

Pursuant to the 2703(d) Order or Equivalent issued in the above-referenced matter, we have conducted a diligent search for documents and information accessible on Google's systems that are responsive to your request. Our response is made in accordance with state and federal law, including the Electronic Communications Privacy Act. See 18 U.S.C. § 2701 et seq.

Accompanying this letter is responsive information to the extent reasonably accessible from our system associated with the YouTube video(s), *r6-qW_PzGEA, x7UvbETwpwU, OPkRMIEv3-I, MQM1_tDk2h8, HfrzKmeXsrI, 6gM_cyROnto, x7uvbETwpwU*, as specified in the 2703(d) Order or Equivalent. We have also included a signed Certificate of Authenticity which includes a list of hash values that correspond to each file contained in the production. Google may not retain a copy of this production but does endeavor to keep a list of the files and their respective hash values. To the extent any document provided herein contains information exceeding the scope of your request, protected from disclosure or otherwise not subject to production, if at all, we have redacted such information or removed such data fields.

Regarding your attached legal request, after a diligent search and reasonable inquiry, we have found no records for any YouTube video file(s) identified as *HXXwf-9otzU*, as specified in your request. Therefore, we do not have documents responsive to your request.

Please note that Google Pay service data is under the control of Google Payment Corporation. Any request for such data must be specifically addressed to Google Payment Corporation and can be served through the email address googlepayments@google.com.

Finally, in accordance with Section 2706 of the Electronic Communications Privacy Act, Google may request reimbursement for reasonable costs incurred in processing your request.

Regards,

Christina Phillip
Google Legal Investigations Support

Google LLC
1600 Amphitheatre Parkway
Mountain View, California 94043



USLawEnforcement@google.com
www.google.com

CERTIFICATE OF AUTHENTICITY

I hereby certify:

1. I am employed by Google LLC ("Google"), located in Mountain View, California. I am authorized to submit this affidavit on behalf of Google. I have personal knowledge of the following facts, except as noted, and could testify competently thereto if called as a witness.
2. I am qualified to authenticate the records because I am familiar with how the records were created, managed, stored and retrieved.
3. Google provides Internet-based services.
4. Attached is a true and correct copy of records pertaining to the Google account-holder(s) identified with account(s) *r6-qW_PzGEA, x7UvbETwpwU, OPkRMIEv3-I, MQM1_tDk2h8, HfrzKmeXsrI, 6gM_cyROnto, x7uvbETwpwU*, with Google Ref. No. 2568092 ("Document"). Accompanying this Certificate of Authenticity as Attachment A is a list of hash values corresponding to each file produced in response to the 2703(d) Order or Equivalent.
5. The Document is a record made and retained by Google. Google servers record this data automatically at the time, or reasonably soon after, it is entered or transmitted by the user, and this data is kept in the course of this regularly conducted activity and was made by regularly conducted activity as a regular practice of Google.
6. The Document is a true duplicate of original records that were generated by Google's electronic process or system that produces an accurate result. The accuracy of Google's electronic process and system is regularly verified by Google.
7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

_____/s_ Christina Phillip_____
(Signature of Records Custodian)

Date: 06/20/19

Christina Phillip
(Name of Records Custodian)

Google LLC
1600 Amphitheatre Parkway
Mountain View, California 94043



USLawEnforcement@google.com

www.google.com

Google LLC
1600 Amphitheatre Parkway
Mountain View, California 94043



USLawEnforcement@google.com
www.google.com

Attachment A: Hash Values for Production Files (Google Ref. No. 2568092)

6gM_cyROnto.YoutubeMetaData.html:

MD5- 322e0eb5140719ec32fcf81a9185076a
SHA512-
215286e8054b602c4145e6ee2f44a8ce568f7b0b3a1051b1e6c50453c77c1551529a97a45acb50da0
a9b8e97bba2cdfef01c78138f6d0a43d8900511717794b8

HfrzKmeXsrI.YoutubeMetaData.html:

MD5- 73389d06eb4650be35b0e549ac0976dd
SHA512-
3d267d7a2abc85af601ba6295b10c119c0b45193d5cbc7c68def114c005119a9d907ae0f7697875cf
bb6be93d0194ba15ba19cb028c95069551b9c0d223ad628

MQM1_tDk2h8.YoutubeMetaData.html:

MD5- 88582d64ed6532f1c5df87ba264484f6
SHA512-
1894ca5ad312dab7f6fd816f46d264f31d42f0c271f9f17cf5c869607da90a435404728f062a1cd8e3
5425200f536b8338b1c29e9577abfa62bb0fe6279c0435

OPkRMIEv3-I.YoutubeMetaData.html:

MD5- 60f7e0a9a5d233b52a6903ce4d020fa4
SHA512-
21a41e4f89345c91719335d6492c7f94a2208792aee25760d6682a0bffc365c68498f2940d1a67a75
692c7a2178c0831365a86a3e3dc2ef262030a1fe155258

r6-qW_PzGEA.YoutubeMetaData.html:

MD5- 9cdf362ea86be446a382dc9b82fe9ad5
SHA512-
b42982c8b4af6e132eafc752cff7bb285febb0c477053ec708986cd5835c31934d1dff965abc2d2208
87c42575661db3e76df91dd23b82c4cdd9d939e17e8f16

x7UvbETwpwU.YoutubeMetaData.html:

MD5- b53375554d389dd1aab7c645c4a8cfb5
SHA512-
9004cae37b1b03ed8cda06c055e5c5f6709816e75abea092a7f190b5ff64dd5e3ab6cb6a0a4d826fec
556660d1dce012c303a9ba6ed0602f510099d4beb6685c

Google Confidential & Proprietary

Video Data

Time Created	Encrypted ID
August 11, 2016 at 3:10 AM UTC	6gM_cyROnto

Google Confidential & Proprietary

Google Confidential & Proprietary

Video Data

Time Created	Encrypted ID
August 16, 2016 at 10:44 PM UTC	HfrzKmeXsrI

Google Confidential & Proprietary

Google Confidential & Proprietary

Video Data

Time Created	Encrypted ID
August 5, 2016 at 5:23 AM UTC	MQM1_tDk2h8

Google Confidential & Proprietary

Google Confidential & Proprietary

Video Data

Time Created	Encrypted ID
August 13, 2016 at 10:50 AM UTC	OPkRMIEv3-I

Google Confidential & Proprietary

Google Confidential & Proprietary

Video Data

Time Created	Encrypted ID
August 10, 2016 at 2:15 AM UTC	r6-qW_PzGEA

Google Confidential & Proprietary

Google Confidential & Proprietary

Video Data

Time Created	Encrypted ID
July 5, 2016 at 8:50 AM UTC	x7UvbETwpwU

Google Confidential & Proprietary

Exhibit B

DECLARATION OF CUSTODIAN OF RECORDS

I, Robert X Browning, attest, under penalties of perjury by the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this certification is true and correct. I am employed by National Cable Satellite Corporation, d/b/a C-SPAN ("C-SPAN"), and my title is Executive Director of the C-SPAN Archives. I am a United States citizen and I am over eighteen years of age. I am a custodian of records of C-SPAN, or I am otherwise qualified as a result of my position to make this declaration. I have knowledge of the record keeping system used by C-SPAN; this includes how videos are uploaded and maintained on C-SPAN's website.

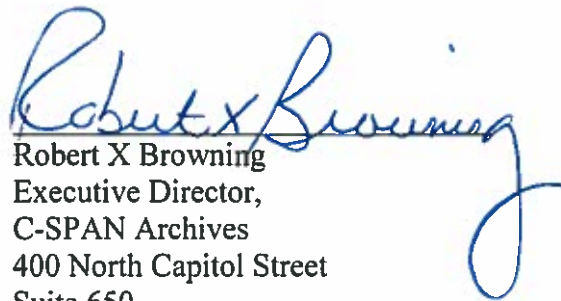
C-SPAN maintains the video located at the URL: <https://www.c-span.org/video/?414109-1/newsmakers-roger-stone> (the "URL"). Pursuant to Federal Rules of Evidence 902(11) and 803(6), I hereby certify that the contents of the URL, including the video posted therein and the date posted for that video (August 18, 2016):

- (1) were made at or near the time of the occurrence of the matters set forth in the URL, by, or from information transmitted by, a person with knowledge of those matters;
- (2) were kept in the course of regularly conducted business activity, in that the contents of the URL were created and preserved pursuant to established procedures, and were relied upon by an employee or this business; and
- (3) were made as part of the regularly conducted business activity as a regular practice, in that the records were created and preserved as part of routine reflections of the normal operations of this business.

I further state that this certification is intended to satisfy Rules 902(11) and 803(6) of the Federal Rules of Evidence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 5-20-2019.

A handwritten signature in blue ink, appearing to read "Robert X Browning", is written over a horizontal line.

Robert X Browning
Executive Director,
C-SPAN Archives
400 North Capitol Street
Suite 650
Washington, DC 20001

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

ROGER J. STONE, JR.,

Defendant.

Criminal No. 19-cr-18-ABJ

ORDER

This matter having come before the Court on the Government's Motion in Limine to Admit The "Upload" or "Creation" Date for Various Videos, and the Court having reviewed the parties' submissions, and for good cause shown, it is

On this _____ day of _____, 2019, hereby:

ORDERED that the Government's motion is GRANTED and the documents appended to the Government's motion as Exhibits A and B will be admitted into evidence at trial.

HON. AMY BERMAN JACKSON
UNITED STATES DISTRICT JUDGE